



IN THE
Supreme Court of the United States.

OCTOBER TERM, 1897.

CHARLES P. BARRETT,
PLAINTIFF IN ERROR,

v.

THE UNITED STATES.

} Nos. 53 and
175 (*consolidated*).

**On Writ of Error to the Circuit and District Courts of
the United States for the Districts of South Carolina.**

REPLY BRIEF OF PLAINTIFF IN ERROR.

FIRST POINT.

On page 2 of brief of defendant in error it is stated that one indictment is for conspiracy in violation of section 5440 Rev. Stats., and that the other is for violation of section 5480 Rev. Stats. This is incorrect. Both indictments are for conspiracy in violation of section 5440 Rev. Stats.

This error is practically admitted by counsel for defendant in error in his brief on page 3, where it is stated that both indictments are for conspiracy.

SECOND POINT.

Counsel for defendant in error, on page 4 of his brief, states that there is only one question under consideration in this case, to wit, that of territorial jurisdiction of the courts below, and bases his contention on a stipulation of counsel, contained in the printed records.

This position of counsel for defendant in error is not sustained by the stipulations themselves, which are as follows :

Case No. 53 (R., p. 6) :

" We agree that the above and foregoing six pages shall constitute the record for the Supreme Court in this case. It is abbreviated for the purpose of curtailing the expense of printing, as well as for the convenience of court and counsel. It is not intended to alter the record in any way and, therefore, should there be any errors of omission or commission, the original record on file in the clerk's office is to control, and so much of it as the court may require is to be printed by plaintiff in error."

Case No. 175 :

" We agree that the foregoing five pages shall constitute the record in this case. It is not abbreviated to alter, vary, or contradict the record on file in the case, but to save expense of printing, as well as for the convenience of court and counsel. Should there be any error of omission or commission in this, the original record is to control. And should the court wish any more of the record printed, the same is to be done by the plaintiff in error."

It is evident from these stipulations that the main purpose was to save the plaintiff in error the expense of printing the whole records, which are voluminous, and contain

much matter that should not have been sent up. It is also obvious that plaintiff in error did not waive any other points in his case disclosed by the records, as it is expressly agreed that any other parts thereof shall be printed, if so desired by the court.

But, however this may be, there is no intention on the part of counsel for plaintiff in error to take any technical advantage of opposing counsel, but he is willing that he be accorded an opportunity to make, if he so desire, an argument, oral or written, or both, in answer to the legal propositions not covered by his brief.

And, in this connection, it is assumed that neither the counsel for the Government nor this court would desire to have erroneous judgments affirmed on a technicality involving the confinement of a citizen for three years in the penitentiary and the payment of fines aggregating \$4,500.

THIRD POINT.

Counsel for the Government concedes in his brief (p. 4) that the indictments were found in the city of Columbia, Richland county, which is in the eastern district, and that the offenses are therein charged to have been committed in Spartanburg county, which is in the western district, if there are two districts. But he denies that there are two districts, claiming that they are divisions or subdivisions of one district. In support of this contention he cites section 546 Rev. Stats., and lays stress on the words, "the eastern and western districts of the *district* of South Carolina," insisting that the words "of the district of South Carolina" preserve the original judicial district of the State. To show that this construction is absolutely untenable, it is only necessary at this juncture to make a comparison of the commissioner's draft of the

revision of the laws and section 546 Rev. Stats., as adopted by Congress.

Section 17—1 Commr. Draft, p. 307.

"The *district* of South Carolina is divided into two *divisions*, which shall be called the Eastern and Western *divisions* of the District of South Carolina. The Western *division* includes the counties of Lancaster, Chester, York, Union, Spartanburgh, Greenville, Pendleton, Abbeville, Edgefield, Newberry, Laurens, and Fairfield, as they existed February 21, 1823. The Eastern *division* includes the residue of said State."

Section 546 Rev. Stats.

"The *State* of South Carolina is divided into two *districts*, which shall be called the Eastern and Western *districts* of the District of South Carolina. The Western *district* includes the counties of Lancaster, Chester, York, Union, Spartanburgh, Greenville, Pendleton, Abbeville, Edgefield, Newberry, Laurens, and Fairfield, as they existed February 21, 1823. The Eastern *district* includes the residue of said State."

This clearly shows that the phrase "of the district" is a mere clerical error, the result of the amendment of the commissioner's draft. The last line of section 546 emphasizes this meaning when it says "the Eastern *district* includes the residue of *said State*," not of said *district* of South Carolina.

Following this comparison of the sections of the commissioners' draft with the corresponding sections of the Revised Statutes, on this subject, the word "division" is everywhere stricken out and the word "district" is substituted therefor.

FOURTH POINT.

The *nisi prius* decision of *Young v. Ins. Co.*, 29 Fed. Rep. 273, cited in brief of counsel for the Government (p. 10), was rendered by Simonton, J., then a district judge holding a circuit court, and was a civil case involving only the question of the taxation of costs. But this decision was rendered on December 10, 1886, which was over two years prior to the passage of the act of February 6, 1889, chap. 113, 25 Stats. 655, establishing a circuit

court in the western district of South Carolina *eo nomine* and providing the time and place for holding said court therein.

The cases of—

Post *v. U. S.*, 161 U. S. 583, and Logan *v. U. S.*, 144 U. S. 263, cited in brief (pp. 10, 11) of counsel for the Government, have no bearing on the point now under consideration, as they both refer to divisions of a district, and not as to whether there were one or two districts in the State, and in those cases there was no contest but what they were divisions of one district.

FIFTH POINT.

In citing section 658, Rev. Stats., counsel for the Government contends that as no sittings or sessions of the circuit court are provided for in the western district, there could be no circuit court for that district. But he fails to consider in this connection section 571, Rev. Stats., which vests the district court for the western district with circuit-court powers, thereby establishing, in effect, though not fact, a circuit court in that district.

Ex parte Insurance Co., 18 Wall. 417.

He also fails to consider section 608, Rev. Stats., which explicitly establishes a circuit court in each of the districts of South Carolina, if, in point of fact, two districts exist by virtue of section 546, and other sections of the Revised Statutes, about which, it seems, there can be no rational doubt.

He also overlooks the provisions of the act of February 6, 1889, which not only establishes a circuit court for the western district by name, but fixes the time and place for its sessions.

SIXTH POINT.

In referring to the act of April 26, 1890, ch. 165, 26 Stats. 71, counsel for the Government seeks to inform the court that the State of South Carolina has never been considered or dealt with by Congress otherwise than as one district. What becomes of sections 530, 531, 546, 551, 552, 571, 572, 608, 767, 776, and 817 of the Rev. Stats., and the provisions of the acts of Congress subsequent thereto, as follows: Act of January 31, 1877, ch. 41, 19 Stats. 230; act of February 6, 1889, ch. 113, 25 Stats. 655; act of July 23, 1892, ch. 235, 27 Stats. 261; act of May 28, 1896, ch. 252, 29 Stats. 180, 182?

If it had been the intention of Congress to make divisions or subdivisions of a district in South Carolina, it could have found fit words to express its meaning. The word "division" or "subdivision" is well known to Congress when it has made divisions of various districts in many of the States, beginning with Iowa in the year 1859 and continuing down to the present time. But it nowhere appears in any act of Congress that the word "division" is used in reference to the districts of South Carolina.

Counsel for the Government in his brief (pp. 9, 16) calls attention of the court to what he seems to consider as facts, to wit, that a district judge, United States attorney, and marshal, are appointed for the "district of South Carolina." This is so manifestly without foundation that it lacks even plausibility.

On the contrary, a most casual reference to the Statutes will demonstrate that one judge is appointed for both the districts in South Carolina (sections 551, 552, Rev. Stats.), and the district attorney and marshal for the eastern district shall perform the duties of such officers for the

western district (sections 767, 776, Rev. Stats.). See also act May 28, 1896, ch. 252, 29 Stats., pp. 180, 182.

Upon the whole case it is submitted that all the facts and the law are with the plaintiff in error and that the judgments below should be reversed.

CHARLES C. LANCASTER,
Counsel for Plaintiff in Error.